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TAGS: [KTIP](#) [ELAB](#) [KCRM](#) [KPAO](#) [KWMN](#) [PGOV](#) [PHUM](#) [PREL](#) [SMIG](#) [GT](#)
SUBJECT: GUATEMALA -- 2009 TIP REPORT: PRESS GUIDANCE AND
DEMARCHE

REF: A. STATE 59732
[B. STATE 005577](#)

¶1. This is an action cable; see paras 5 through 7 and 10.

¶2. On June 16, 2009, at 10:00 a.m. EDT, the Secretary will release the 2009 Trafficking in Persons (TIP) Report at a press conference in the Department's press briefing room. This release will receive substantial coverage in domestic and foreign news outlets. Until the time of the Secretary's June 16 press conference, any public release of the Report or country narratives contained therein is prohibited.

¶3. The Department is hereby providing Post with advance press guidance to be used on June 16 or thereafter. Also provided is demarche language to be used in informing the Government of Guatemala of its tier ranking and the TIP Report's imminent release. The text of the TIP Report country narrative is provided, both for use in informing the Government of Guatemala and in any local media release by Post's public affairs section on June 16 or thereafter. Drawing on information provided below in paras 8 and 9, Post may provide the host government with the text of the TIP Report narrative no earlier than 1200 noon local time Monday June 15 for WHA, AF, EUR, and NEA countries and OOB local time Tuesday June 16 for SCA and EAP posts. Please note, however, that any public release of the Report's information should not/not precede the Secretary's release at 10:00 am EDT on June 16.

¶4. The entire TIP Report will be available on-line at shortly after the Secretary's June 16 release. Hard copies of the Report will be pouched to posts in all countries appearing on the Report. The Secretary's statement at the June 16 press event, and the statement of and fielding of media questions by G/TIP's Director and Senior Advisor to the Secretary, Ambassador-at-Large Luis CdeBaca, will be available on the Department's website shortly after the June 16 event. Ambassador de Baca will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 pm EDT.

¶5. Action Request: No earlier than OOB local time Monday June 15 for WHA, AF, EUR, and NEA posts and OOB local time on Tuesday June 16 for SCA and EAP posts, please inform the appropriate official in the Government of Guatemala of the June 16 release of the 2009 TIP Report, drawing on the points in para 9 (at Post's discretion) and including the text of the country narrative provided in para 8. For countries where the State Department has lowered the tier ranking, it is particularly important to advise governments prior to the Report being released in Washington on June 16.

¶6. Action Request continued: Please note that, for those countries which will not receive an "action plan" with specific recommendations for improvement, posts should draw host governments' attention to the areas for improvement identified in the 2009 Report, especially highlighted in the "Recommendations" section of the second paragraph of the narrative text. This engagement is important to establishing

the framework in which the government's performance will be judged for the 2010 Report. If posts have questions about which governments will receive an action plan, or how they may follow up on the recommendations in the 2009 Report, please contact G/TIP and the appropriate regional bureau.

17. Action Request continued: On June 16, please be prepared to answer media inquiries on the Report's release using the press guidance provided in para 11. If Post wishes, a local press statement may be released on or after 10:30 am EDT June 16, drawing on the press guidance and the text of the TIP Report's country narrative provided in para 8.

18. Begin Final Text of Guatemala's country narrative in the 2009 TIP Report:

GUATEMALA (TIER 2 WATCH LIST)

Guatemala is a source, transit, and destination country for Guatemalans and Central Americans trafficked for the purposes of commercial sexual exploitation and forced labor. Human trafficking is a significant and growing problem in the country, particularly the exploitation of children in prostitution. Guatemalan women and children are trafficked within the country, and to Mexico and the United States, for commercial sexual exploitation. NGOs report nascent child sex tourism in certain tourist areas such as Antigua and Guatemala City. Young Guatemalan girls are also subject to forced labor within the country as domestic servants.

Guatemalan men, women, and children are trafficked within the country, as well as to Mexico and the United States, for forced labor, particularly in agriculture. In the Mexican border area, Guatemalan children are exploited for forced begging on streets and forced labor in municipal dumps; Guatemalan men, women, and children are trafficked for forced agricultural work, particularly on coffee plantations.

Guatemala is a destination country for victims from El Salvador, Honduras, and Nicaragua, trafficked for the purpose of commercial sexual exploitation. Border areas with Mexico and Belize remain a top concern due to the heavy flow of undocumented migrants, many of whom fall victim to traffickers.

The Government of Guatemala does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the past year, the Guatemalan Congress unanimously approved a bill to strengthen Guatemalan laws against human trafficking and other forms of sexual exploitation and violence. In addition, the government strengthened its investigative efforts during the first year of operation of a prosecutorial unit dedicated to fighting human trafficking and illegal adoptions. Despite such overall significant efforts, Guatemala is placed on Tier 2 Watch List for failing to show increasing efforts to combat human trafficking, particularly in terms of providing adequate assistance to victims and ensuring that trafficking offenders, including corrupt public officials, are appropriately prosecuted, convicted, and sentenced for their crimes.

Recommendations for Guatemala: Implement and enforce the new anti-trafficking law; increase efforts to investigate and prosecute trafficking offenses, and convict and punish trafficking offenders, including public officials complicit with trafficking activity; pursue suspected cases of forced labor and domestic servitude crimes in addition to suspected cases of adult sex trafficking; improve victim services and assistance; increase anti-trafficking training for judges and police; and increase funding for anti-trafficking efforts, particularly for the country's dedicated prosecutorial and police units.

Prosecution

The government made limited efforts against trafficking offenders last year. While prosecutors initiated some trafficking prosecutions, they continued to face problems in court with application of Guatemala's earlier anti-trafficking law, Article 194 of the Penal Code, which prohibited all forms of trafficking in persons, prescribing penalties of from six to 12 years, imprisonment. During the

reporting period, judges continued to dismiss charges under Article 194 in favor of more familiar but less serious offenses, such as pandering or procuring, which prescribe inadequate penalties) only fines -- to deter commission of trafficking crimes. The Guatemalan Congress, however, strengthened the country,s anti-trafficking legal framework by enacting a law, which came into force in April 2009, to clarify the statutory definition of trafficking in persons, in addition to increasing penalties for trafficking, trafficking-related crimes, and other forms of sexual violence and exploitation. Article 202 of the new law prohibits the transport, transfer, retention, harboring, or reception of persons for the purposes of prostitution, sexual exploitation, forced labor or services, begging, slavery, illegal adoptions, or forced marriage, in addition to other prohibited purposes. Penalties established under the new law are from eight to 18 years, imprisonment; under aggravated circumstances, such as when the crime involves kidnapping, threats, violence, weapons, or a public official, penalties increase by one-third. Such penalties are sufficiently stringent and commensurate with penalties prescribed for other serious crimes such as rape. During the reporting period, the government maintained small dedicated police and prosecutorial units to investigate and prosecute human trafficking cases. In 2008, the government initiated criminal proceedings under existing laws against 55 suspected trafficking offenders; seven of these 55 proceedings involved allegations of commercial sexual exploitation of children, which is even with results from 2007, when the government prosecuted eight trafficking-related cases. During the reporting period, the government focused most of its limited resources on prosecuting illegal adoptions, which are defined as a form of trafficking in persons under Guatemalan law and have a high incidence in the country. No prosecutions for forced labor crimes or sex trafficking crimes involving adult victims were reported, nor prosecutions of government officials complicit with trafficking activity. No trafficking convictions or sentences were obtained under Article 194 in Guatemala City, though prosecutors in Jalapa reported one trafficking conviction in an illegal adoption case, securing a sentence of six years in prison. Overall, anti-trafficking police and prosecutors remained plagued by a severe lack of funding and resources; for example, Guatemala,s five-person anti-trafficking police unit had only one vehicle to investigate trafficking cases throughout the country. Police also remained crippled by high staff turnover and a lack of specialized training. Credible reports from international organizations and NGOs indicated that corrupt public officials continued to impede anti-trafficking law enforcement and facilitate trafficking activity by accepting or extorting bribes, sexually exploiting children, falsifying identity documents, leaking information about impending police raids to suspected traffickers, and ignoring trafficking activity in brothels and commercial sex sites. While the government made efforts to dismiss some public officials from their positions, it did not attempt to criminally investigate or prosecute any of them.

Protection

The government made insufficient efforts to protect trafficking victims during the reporting period, relying largely on NGOs and international organizations to provide the bulk of victim services. Child victims are eligible for basic care at seven government-run shelters upon judicial order, but were typically referred to NGOs such as Casa Alianza for assistance. However, Casa Alianza announced closure of its Guatemala facilities in January 2009; the government referred an average of 300 sexually exploited youth, including child trafficking victims, to Casa Alianza each year. In December 2008, the government approved a budget increase for the Secretariat of Social Welfare to expand generalized child victim services, which should become available in 2009. Government-run services dedicated to adult trafficking victims remained virtually non-existent. Although Guatemalan authorities encourage victims to assist with the investigation and prosecution of their traffickers, most victims did not file complaints due to fear of violence or reprisals, and lack of confidence in the country,s

criminal justice system and limited witness protection program. The government did not detain, fine, or otherwise penalize victims for unlawful acts committed as a direct result of being trafficked. The government continued to operate a migrants, shelter in Guatemala City with separate space for foreign trafficking victims, though some foreign trafficking victims appear to have been deported. The new anti-trafficking law established procedures for repatriation of trafficked victims without detention. Guatemalan law does not, however, provide foreign victims with temporary or permanent residency status, or a legal alternative to removal to countries where they may face hardship or retribution.

The government continued anti-trafficking training for consular officials posted abroad, and police conducted brothel raids throughout the year to rescue children from sex trafficking situations, rescuing 45 children during the reporting period. The government endeavored to apply procedures to identify trafficking victims among vulnerable populations, such as prostituted women in brothels, but did not have an estimate of the number of victims identified through this mechanism.

Prevention

The government sustained efforts to prevent trafficking during the reporting period. The government continued anti-trafficking media campaigns and workshops, and operated a call center to provide information to citizens about the dangers of human trafficking and to refer victims for assistance. In July 2008, the government approved a 10-year national action plan to combat human trafficking, and the government's interagency committee met throughout the year. The government made no discernable efforts to reduce demand for commercial sex acts or forced labor. The government provided human rights training (including human trafficking) to Guatemalan troops deployed for international peacekeeping operations.

¶9. Post may wish to deliver the following points, which offer technical and legal background on the TIP Report process, to the host government as a non-paper with the above TIP Report country narrative:

(begin non-paper)

-- The U.S. Congress, through its passage of the 2000 Trafficking Victims Protection Act, as amended (TVPA), requires the Secretary of State to submit an annual Report to Congress. The goal of this Report is to stimulate action and create partnerships around the world in the fight against modern-day slavery. The USG approach to combating human trafficking follows the TVPA and the standards set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (commonly known as the "Palermo Protocol"). The TVPA and the Palermo Protocol recognize that this is a crime in which the victims, labor or services (including in the "sex industry") are obtained or maintained through force, fraud, or coercion, whether overt or through psychological manipulation. While much attention has focused on international flows, both the TVPA and the Palermo Protocol focus on the exploitation of the victim, and do not require a showing that the victim was moved.

-- Recent amendments to the TVPA removed the requirement that only countries with a "significant number" of trafficking victims be included in the Report. Beginning with the 2009 TIP Report, countries determined to be a country of origin, transit, or destination for victims of severe forms of trafficking are included in the Report and assigned to one of three tiers. Countries assessed as meeting the "minimum standards for the elimination of severe forms of trafficking" set forth in the TVPA are classified as Tier 1. Countries assessed as not fully complying with the minimum standards, but making significant efforts to meet those minimum standards are classified as Tier 2. Countries assessed as neither complying with the minimum standards nor making significant efforts to do so are classified as Tier 3.

-- The TVPA also requires the Secretary of State to provide a

"Special Watch List" to Congress later in the year. Anti-trafficking efforts of the countries on this list are to be evaluated again in an Interim Assessment that the Secretary of State must provide to Congress by February 1 of each year. Countries are included on the "Special Watch List" if they move up in "tier" rankings in the annual TIP Report -- from 3 to 2 or from 2 to 1) or if they have been placed on the Tier 2 Watch List.

-- Tier 2 Watch List consists of Tier 2 countries determined: (1) not to have made "increasing efforts" to combat human trafficking over the past year; (2) to be making significant efforts based on commitments of anti-trafficking reforms over the next year, or (3) to have a very significant number of trafficking victims or a significantly increasing victim population. As indicated in reftel B, the TVPRA of 2008 contains a provision requiring that a country that has been included on Tier 2 Watch List for two consecutive years after the date of enactment of the TVPRA of 2008 be ranked as Tier 3. Thus, any automatic downgrade to Tier 3 pursuant to this provision would take place, at the earliest, in the 2011 TIP Report (i.e., a country would have to be ranked Tier 2 Watch List in the 2009 and 2010 Reports before being subject to Tier 3 in the 2011 Report). The new law allows for a waiver of this provision for up to two additional years upon a determination by the President that the country has developed and devoted sufficient resources to a written plan to make significant efforts to bring itself into compliance with the minimum standards.

-- Countries classified as Tier 3 may be subject to statutory restrictions for the subsequent fiscal year on non-humanitarian and non-trade-related foreign assistance and, in some circumstances, withholding of funding for participation by government officials or employees in educational and cultural exchange programs. In addition, the President could instruct the U.S. executive directors to international financial institutions to oppose loans or other utilization of funds (other than for humanitarian, trade-related or certain types of development assistance) with respect to countries on Tier 3. Countries classified as Tier 3 that take strong action within 90 days of the Report's release to show significant efforts against trafficking in persons, and thereby warrant a reassessment of their Tier classification, would avoid such sanctions. Guidelines for such actions are in the DOS-crafted action plans to be shared by Posts with host governments.

-- The 2009 TIP Report, issuing as it does in the midst of the global financial crisis, highlights high levels of trafficking for forced labor in many parts of the world and systemic contributing factors to this phenomenon: fraudulent recruitment practices and excessive recruiting fees in workers, home countries; the lack of adequate labor protections in both sending and receiving countries; and the flawed design of some destination countries, "sponsorship systems" that do not give foreign workers adequate legal recourse when faced with conditions of forced labor. As the May 2009 ILO Global Report on Forced Labor concluded, forced labor victims suffer approximately \$20 billion in losses, and traffickers, profits are estimated at \$31 billion. The current global financial crisis threatens to increase the number of victims of forced labor and increase the associated "cost of coercion."

-- The text of the TVPA and amendments can be found on website.

-- On June 16, 2009, the Secretary of State will release the ninth annual TIP Report in a public event at the State Department. We are providing you an advance copy of your country's narrative in that report. Please keep this information embargoed until 10:00 am Washington DC time June 16. The State Department will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 pm EDT.

(end non-paper)

¶10. Posts should make sure that the relevant country narrative is readily available on or though the Mission's web page in English and appropriate local language(s) as soon as possible after the TIP Report is released. Funding for translation costs will be handled as it was for the Human Rights Report. Posts needing financial assistance for translation costs should contact their regional bureau's EX office.

¶11. The following is press guidance provided for Post to use with local media.

Q1: Why was Guatemala given a ranking of Tier 2 Watch List?

A: The Government of Guatemala does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the past year, the Guatemalan Congress unanimously approved a bill to strengthen Guatemalan laws against human trafficking and other forms of sexual exploitation and violence. In addition, the government strengthened its investigative efforts during the first year of operation of a prosecutorial unit dedicated to fighting human trafficking and illegal adoptions. Despite such efforts, Guatemala is placed on Tier 2 Watch List for failing to show increasing efforts to combat human trafficking, particularly in terms of providing adequate assistance to victims and ensuring that trafficking offenders, including corrupt public officials, are appropriately prosecuted, convicted, and sentenced for their crimes.

Q2: What is the nature of Guatemala's trafficking problem?

A: Guatemala is a source, transit, and destination country for Guatemalans and Central Americans trafficked for the purposes of commercial sexual exploitation and forced labor. Human trafficking is a significant and growing problem in the country, particularly the exploitation of children in prostitution. Guatemalan women and children are trafficked within the country, and to Mexico and the United States, for commercial sexual exploitation. NGOs report nascent child sex tourism in certain tourist areas such as Antigua and Guatemala City. Young Guatemalan girls are also subject to forced labor within the country as domestic servants. Guatemalan men, women, and children are trafficked within the country, as well as to Mexico and the United States, for forced labor, particularly in agriculture. In the Mexican border area, Guatemalan children are exploited for forced begging on streets and forced labor in municipal dumps; Guatemalan men, women, and children are trafficked for forced agricultural work, particularly on coffee plantations. Guatemala is a destination country for victims from El Salvador, Honduras, and Nicaragua, trafficked for the purpose of commercial sexual exploitation. Border areas with Mexico and Belize remain a top concern due to the heavy flow of undocumented migrants, many of whom fall victim to traffickers.

Q3: How can Guatemala improve its anti-trafficking efforts?

A: To advance its efforts to combat human trafficking, the Government of Guatemala could: implement and enforce the new anti-trafficking law; increase efforts to investigate and prosecute trafficking offenses, and convict and punish trafficking offenders, including public officials complicit with trafficking activity; pursue suspected cases of forced labor and domestic servitude crimes in addition to suspected cases of adult sex trafficking; improve victim services and assistance; increase anti-trafficking training for judges and police; and increase funding for anti-trafficking efforts, particularly for the country's dedicated prosecutorial and police units.

¶12. The Department appreciates posts, assistance with the preceding action requests.

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